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Workmen's Compensation--Assault by Third Person--Liability of Employer

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extent that the management must provide some screened seats, thus giving the spectator the opportunity of occupying them.⁶ Holding that hockey was not so universally played and known as baseball the court in the principal case refused to apply the "baseball rule."⁷

Those jurisdictions denying recovery in hockey cases have applied the "baseball rule" on the theory that in that particular locality hockey is as well known as baseball.⁸

It is questionable as to how long this decision will stand since it is based on the premise that hockey, despite newspaper, radio, television and motion picture coverage, is not a game which is generally known to cause injury to spectators.

ROBERT A. FRIEL

WORKMEN'S COMPENSATION — ASSAULT BY THIRD PERSON — LIABILITY OF EMPLOYER

The plaintiff sued for compensation for her husband's death under the Louisiana Workmen's Compensation statute.¹ Her husband had been shot and killed while working as a laborer. The sole reason for the homicide was the killer's belief that the deceased employee had been having an affair with the killer's wife. *Held*: The death arose out of the employment and therefore was compensable.²

Workmen's Compensation statutes, in general, require that the accident, to be compensable, must "arise out of" the employment.³ The vast majority of courts dealing with the question have held that an injury inflicted on an employee in the course of his employment by one who commits an assault for motives unrelated to the employment is not compensable.⁴ However, if the assault is committed because the employee engaged in the performance of his duties, the injury is compensable.⁵

while the baseball players were practicing. There was dictum to the effect that the rule would be applied but for this factor.).

⁶ *Quinn v. Recreation Park Ass'n*, 3 Cal.2d 725, 46 P.2d 144 (1935); *Brisson v. Minneapolis Baseball & Athletic Ass'n*, 185 Minn. 507, 240 N.W. 903 (1932); *Cates v. Cincinnati Exhibition Co.*, 215 N.C. 64, 1 S.E.2d 131 (1939).

⁷ *Accord*, *Uline Ice, Inc. v. Sullivan*, 187 F.2d 82 (D.C. Cir. 1950); *Shurman v. Fresno Ice Rink, Inc.*, 91 Cal. App.2d 469, 205 P.2d 77 (1949) (Defendant had even posted warning signs and made loud speaker announcements.); *Thurman v. Clune*, 51 Cal. App.2d 505, 125 P.2d 59 (1942); *Thurman v. Ice Palace*, 36 Cal. App.2d 364, 97 P.2d 999 (1939); *Shanney v. Boston Madison Square Garden Corp.*, 296 Mass. 168, 5 N.E.2d 1 (1936); *Tite v. Omaha Coliseum Corp.*, 144 Neb. 22, 12 N.W.2d 90 (1943); *James v. R. I. Auditorium, Inc.*, 60 R.I. 405, 199 Atl. 293 (1938).

⁸ *Modoc v. City of Eveleth*, 244 Minn. 556, 29 N.W.2d 453 (1947); *Hammel v. Madison Square Garden Corp.*, 156 Misc. 311, 279 N.Y. Supp. 815 (1935); *Ingersoll v. Onondaga Hockey Club, Inc.*, 245 App. Div. 137, 281 N.Y. Supp. 505 (1935).

The courts have interpreted the provision of the statute requiring the accident to "arise out of" the employment to mean that the injury must flow as a rational or natural consequence from a cause originating in a risk connected with or incidental to the employment.⁶ If there is no such causal connection⁷ between the employment and the assault, the legislature did not intend to cast the loss on the employer.⁸ Since the Workmen's Compensation statutes are remedial, and as such have been liberally construed,⁹ the courts do not delve into the niceties of "proximate cause"¹⁰ so long as the cause of the injury is not outside of or completely disconnected with the employment.¹¹

The court in the principal case reasoned that the work of the deceased

¹ LA. REV. STAT. tit. 23:1031 (1914).

² *Livingston v. Henry and Hall*, 59 So.2d 892 (La. App. 1952).

³ LATTY, INTRODUCTION TO BUSINESS ASSOCIATIONS 214 (1951).

⁴ *Conway v. Globin*, 105 Cal. App.2d 495, 233 P.2d 612 (1951); *Bryden v. Industrial Accident Commission*, 62 Cal. App. 3, 215 Pac. 1035 (1923); *Willis v. Taylor and Fenn Co.*, 137 Conn. 626, 79 A.2d 821 (1951); *Jackson v. Wilson*, 84 Ga. App. 684, 67 S.E.2d 161 (1951); *City of Chicago v. Industrial Commission*, 292 Ill. 406, 127 N.E. 49 (1920); *January-Wood Co. v. Schumacher*, 231 Ky. 705, 22 S.W.2d 117 (1929); *Ramos v. Taxi Transit Co.*, 276 App. Div. 101, 92 N.Y.S.2d 744 (1949), *aff'd.*, 301 N.Y. 749, 95 N.E.2d 625 (1950); *Coope v. Loew's Gate Theater*, 215 App. Div. 259, 213 N.Y. Supp. 254 (1926); *Shoemaker v. Standard Oil Co. of Ohio*, 66 Ohio App. 224, 31 N.E.2d 92 (1940); *Rothfarb v. Camp Awanee, Inc.*, 116 Vt. 172, 71 A.2d 569 (1950) HOROVITZ, WORKMEN'S COMPENSATION 136-139 (1944).

⁵ The distinction is well pointed up by the cases that hold that if a watchman or other employee is injured by a burglar while the former is protecting his employer's property from theft, the injury is compensable; whereas, if the employee is injured by a burglar while the latter is attempting to steal the property of the employee and not that of the employer, the injury did not arise out of the employment. *Bryden v. Industrial Accident Commission*, 62 Cal. App. 3, 215 Pac. 1035 (1923); *Winck v. Industrial Commission of Ohio*, 29 Ohio L. Abs. 503 (1938); *Langenheim v. Industrial Commission of Ohio*, 25 Ohio App. 1, 158 N.E. 605 (1927); *Sinclair Prairie Oil Marketing Co. v. King*, 185 Okla. 570, 94 P.2d 911 (1939).

⁶ *Scott v. Industrial Commission*, 374 Ill. 225, 29 N.E.2d 93 (1940); *January-Wood Co. v. Schumacher*, 231 Ky. 705, 22 S.W.2d 117 (1929); *Coope v. Loew's Gate Theater*, 215 App. Div. 259, 213 N.Y. Supp. 254 (1926).

⁷ *Scott v. Industrial Commission*, 374 Ill. 225, 29 N.E.2d 93 (1940); *Merz v. Industrial Commission of Ohio*, 134 Ohio St. 36, 15 N.E.2d 632 (1938); *Rothfarb v. Camp Awanee, Inc.*, 116 Vt. 172, 71 A.2d 569 (1950). 6 SCHNEIDER, WORKMEN'S COMPENSATION LAW 7 (3d ed. 1948).

⁸ *State ex rel. Common School District No. 1 in Itasca v. District Court of Itasca County*, 140 Minn. 470, 168 N.W. 555 (1918); *Langenheim v. Industrial Commission of Ohio*, 25 Ohio App. 1, 158 N.E. 605 (1927).

⁹ *Delassandro v. Industrial Commission of Ohio*, 110 Ohio St. 506, 144 N.E. 138 (1924).

¹⁰ *Scott v. Industrial Commission*, 374 Ill. 225, 29 N.E.2d 93 (1940); *January-Wood Co. v. Schumacher*, 231 Ky. 705, 22 S.W.2d 117 (1929).

¹¹ *Hartford Accident and Indemnity Co. v. Cardillo*, 112 F.2d 11 (D.C. Cir. 1940),

required him to be at the place where he was killed, this being a "zone of special danger,"¹² and that no more was necessary for recovery under the statute "than that the work subject the employee to a peril which comes from the fact that he is required to be in the place where it strikes when it does so."¹³ However, such reasoning ignores the fact that, in view of the motives involved in this case, the killing would probably have occurred wherever the husband happened to find the employee.¹⁴ The fact that the employee was killed because he was alienating the affections of another man's wife is not a risk that is traceable to his employment as a laborer on a highway.¹⁵ To extend the Workmen's Compensation statutes' provision to a situation involving a personal assault is, in effect, making the

cert. denied, 309 U.S. 689, 60 Sup. Ct. 891 (1940); *Conway v. Globin*, 105 Cal. App.2d 495, 233 P.2d 612 (1951).

Other tests have also been proposed. The injury must at least be an incident of the employment. *Willis v. Taylor and Fenn Co.*, 137 Conn. 626, 79 A.2d 821 (1951); *City of Chicago v. Industrial Commission*, 292 Ill. 406, 127 N.E. 49 (1920). The injury must not be merely contemporaneous or coincident with or collateral to the employment. *January-Wood Co. v. Schumacher*, 231 Ky. 705, 22 S.W.2d 117 (1929). The employment must cause a special degree of exposure to risk beyond that suffered by the general public. *Coope v. Loew's Gate Theater*, 215 App. Div. 259, 213 N.Y. Supp. 254 (1926). The injury must have been sustained because of the employment, in furtherance of the employer's interests or in the performance of acts reasonably related to the employer's interests. *Willis v. Taylor and Fenn Co.*, *supra*; *Stark v. Wilson*, 114 Kan. 459, 219 Pac. 507 (1923); *Delassandro v. Industrial Commission of Ohio*, 110 Ohio St. 506, 144 N.E. 138 (1924).

¹² See *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 71 Sup. Ct. 470 (1951); *Edwards v. Louisiana Forestry Commission*, 60 So.2d 449 (La. Sup. Ct. 1952). *PROSSER, TORTS* 533 (1941).

Thom v. Sinclair, [1917] A.C. 127, 143 explains this doctrine: [The expression "arising out of" the employment] "applies to the employment as such—to its nature, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears that the broad words of the statute 'arising out of the employment' apply. It was part of the conditions of the appellant's labour and part of the obligations which she undertook as a servant of the respondent that she should at the time of the accident occupy this particular place of work which turned out to be a place of special danger. Her service there and not anywhere else brought her into the position of being subjected to this peril."

¹³ *Livingston v. Henry and Hall*, 59 So.2d 892, 895 (La. App. 1952).

¹⁴ *Bryden v. Industrial Accident Commission*, 62 Cal. App. 3, 215 Pac. 1035 (1923); *Brookhaven Steam Laundry v. Watts*, 55 So.2d 381 (Miss. Sup. Ct. 1951), *rev'd on rehearing*, 59 So.2d 294 (1952).

¹⁵ *January-Wood Co. v. Schumacher*, 231 Ky. 705, 22 S.W.2d 117 (1929); *Ramos v. Taxi Transit Co.*, 276 App. Div. 101, 92 N.Y.S.2d 744 (1949), *aff'd*, 301 N.Y. 749, 95 N.E.2d 625 (1950); *Coope v. Loew's Gate Theater*, 215 App. Div. 259, 213 N.Y. Supp. 254 (1926); *Shoemaker v. Standard Oil Co. of Ohio*, 66 Ohio App. 224, 31 N.E.2d 92 (1940). In these cases, an employee was assaulted because the attacker believed the employee to be the paramour of his wife. The facts are directly in point with the principal case, and in all these cases the injury was held noncompensable since it was personal in origin.